

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,)
Plaintiff,)
)
v.) Case No. 1:14-cv-224-LG-JCG
DAWN PROPERTIES, INC.,)
SOUTHERN CROSS CONSTRUCTION)
COMPANY, INC.,)
RIDGELAND CONSTRUCTION ONE, LLC,)
THE BEACH CLUB, LLC,)
THE BELMONT OF LAMAR, LLC,)
GRAND BISCAYNE APTS., LLC,)
SEAINN, LLC, and)
IKE W. THRASH,)
Defendants,)
and)
)
SUMMER MISS, LLC,)
14510 LEMOYNE BOULEVARD, LLC,)
LEXINGTON MILL MISSISSIPPI OWNER, LLC,)
INN BY THE SEA HOME OWNERS)
ASSOCIATION, INC., and)
ALCURT BILOXI II LLC,)
Rule 19 Defendants,)
and)
)
14510 LEMOYNE BOULEVARD, LLC,)
Cross-claimant,)
)
v.)
)
GRAND BISCAYNE APTS., LLC and)
IKE W. THRASH,)
Cross-defendant and)
Rule 19/20 Defendant to)
Crossclaim.)
)

**STIPULATED ORDER RESOLVING THE DEFENDANTS' AND IKE W. THRASH'S
MOTION FOR ADDITIONAL TIME WITHIN WHICH TO COMPLY WITH THE
TERMS AND CONDITIONS OF THE CONSENT ORDER PURSUANT TO F.R.C.P. 60,
ECF NOS. 586 AND 587**

Upon consideration of the United States' and Defendants' Joint Motion to Enter a Stipulated Order Resolving the Defendants' and Ike W. Thrash's Motion for Additional Time Within Which to Comply With the Terms and Conditions of the Consent Order Pursuant to F.R.C.P. 60, ECF Nos. 586 and 587, the Parties' Joint Motion is hereby GRANTED.

It is hereby ORDERED:

Defendants' and Ike W. Thrash's Motion for Additional Time Within Which to Comply With the Terms and Conditions of the Consent Order Pursuant to F.R.C.P. 60, ECF Nos. 586 and 587, is hereby dismissed without prejudice.

It is FURTHER ORDERED that the Consent Order between the United States and Defendants, ECF No. 572, is amended as follows:

1) Paragraphs 32 and 36 are amended to require the Defendants to complete the retrofits required by the Consent Order, and conduct the initial inspections of the retrofits required by paragraph 43, on the following schedule:

One Property (Inn by the Sea): By January 22, 2018

One Property (Beach Club): By December 31, 2018

Two Properties: By December 30, 2019

Two Properties: By December 30, 2020

The Lexington property shall be one of the properties completed and inspected by December 30, 2019.

2) Defendants shall provide monthly construction status reports to the United States for each property required to be retrofitted by the Consent Order. The monthly construction status reports shall state: (a) how many units have been started, (b) how many units have been completed, (c) the status of any exterior work, and (d) an estimated date of completion. The monthly construction status reports shall be submitted to the United States on the first business day of each month, starting in February, 2018 and

shall be submitted by email, facsimile, or overnight delivery.¹ Defendants shall submit monthly construction status reports until the neutral inspector certifies that all retrofits have been completed. *See* Consent Order ¶¶ 43-44. Defendants shall continue to submit the report required by paragraph 55 to the United States every six months.

3) Defendants shall install grab bars using Wing-Its at two of each unit type at the Beach Club property for inspection by the United States, as part of Defendants' planned retrofitting of sample units at that property.

- a. If the United States is satisfied that the grab bars as installed in the sample units provide sufficient stability, Defendants will not be required to install the blocking required by the Consent Order's retrofit appendix for the Beach Club. *See* Consent Order App. B-1. If the United States is satisfied that the later installation of grab bars using Wing-Its provide sufficient stability at the Beach Club, the Defendants shall inform all tenants and any prospective tenant that grab bars will be installed at no cost to them upon request.
- b. If the United States is not satisfied that the installation of grab bars using Wing-Its provides sufficient stability, the Defendants shall install the blocking required by the Consent Order. *See* Consent Order App. B-1.
- c. If the United States is satisfied that the installation of grab bars using Wing-Its provide sufficient stability at the Beach Club, the United States will consider agreeing to stipulate for the Court's approval an amendment of the Consent Order to allow the later installation of grab bars using Wing-Its at Grand Biscayne, Belmont (Biloxi), Belmont (Hattiesburg), and Lexington rather than requiring Defendants to install the blocking required by the Consent Order. *See* Consent Order Apps. B-2-B-5. This

¹ The monthly construction status reports shall be submitted by email to: julie.allen@usdoj.gov, kinara.flagg@usdoj.gov and aurora.bryant@usdoj.gov; or by facsimile to: 202-514-1116; or by overnight delivery to: U.S. Department of Justice, Civil Rights Division, Housing and Civil Enforcement Section, 1800 G Street, NW, Suite 7002, Washington, DC 20006.

potential amendment to the Consent Order is subject to the Defendants' agreement to provide 30 grab bar sets to each of the current owners for installation. This potential amendment to the Consent Order is also subject to the current owners' agreement to inform all tenants and any prospective tenant that grab bars will be installed at no cost to them upon request.

4) The United States conditionally agrees that the firm of Machado Patano, to which it has objected, shall serve as the neutral inspector required by paragraphs 42-44 of the Consent Order subject to the United States' review of the firm's work as the neutral inspector. The United States reserves its right to object to Machado Patano continuing to serve in that role, and if necessary, to raise this matter pursuant to the dispute resolution provision of the Consent Order. *See* Consent Order ¶ 59.

5) If the Defendants provide any materials to the neutral inspector for review, including, but not limited to, architectural or engineering drawings, the Defendants shall provide the same material to the United States at the same time.

It is FURTHER ORDERED that any time the neutral inspector inspects any retrofits at any property, including retrofits of sample units, the Defendants shall give the United States at least 21-days advance notice and the opportunity to attend the inspection as required by the Consent Order. *See* Consent Order ¶¶ 43-44.

It is FURTHER ORDERED that as set forth in paragraph 57, the Consent Order shall remain in effect for the later of four years from the date of entry or until six months after the neutral inspector has certified that all of the retrofits required by Appendices A and B have been completed.

It is FURTHER ORDERED that the remaining terms of the Consent Order between the United States and the Dawn Defendants remain unchanged and are in full force and effect.

SO ORDERED AND ADJUDGED this the 17th day of January 2018.

s/ Louis Guirola, Jr.

Louis Guirola, Jr.
U.S. District Judge

The undersigned apply for and consent to the entry of this Stipulated Order:

FOR THE UNITED STATES:

D. Michael Hurst, Jr.
United States Attorney
Southern District of Mississippi
501 E. Court Street, Suite 4.430
Jackson, MS 39201
601-973-2842

John M. Gore
Acting Assistant Attorney General
Civil Rights Division

/s/ Julie J. Allen
SAMEENA SHINA MAJEED
Chief
MICHAEL S. MAURER
Deputy Chief
JULIE J. ALLEN
KINARA A. FLAGG
AURORA R. BRYANT
Trial Attorneys
United States Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section
950 Pennsylvania Avenue, N.W.
Northwestern Building
Washington, D.C. 20530
202-307-6275
202-514-1116 (fax)
julie.allen@usdoj.gov
kinara.flagg@usdoj.gov
aurora.bryant@usdoj.gov

FOR THE DEFENDANTS:

/s/ Nicholas Van Wiser
Nicholas Van Wiser (MSB No. 7339)
Russell Manning (MSB No. 102789)
BYRD & WISER
P.O. Box 1939
Biloxi, Mississippi 39533

T: 228.432.8123

F: 228.432.7029

nwiser@byrdwiser.com

rsm@byrdwiser.com